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ABSTRACT

This report presents Wisconsin state legislation on community corrections issues. Part I provides a description of key provisions of two relevant 1987 assembly bills. Part II summarizies activities of the Wisconsin State Legislative Council's Special Committee on Community Corrections Issues. Part III provides a description of the background and major provisions of 1987 Assembly Bill 260 which: (1) allows the court to order payment of unpaid restitution as a condition of parole for revoked probationers; (2) requires the district attorney to obtain information on the victim's pecuniary loss, unless a presentence investigation is ordered; (3) clarifies that the victim must demonstrate losses and the defendant must demonstrate ability to pay; (4) allows the court to establish a restitution payment schedule; and (5) allows the court to order joint and several liability for restitution payments. Part IV provides a description of the background and major provisions of 1987 Assembly Bill 261 which specifies that persons participating as child care workers in the Department of Health and Social Services' pilot project to provide child care services to children of probationers are state agents and covered by state liability programs, and authorizes the Department of Justice to treat, as a state agent, any person participating as a child care worker in the project. A list of committee materials is appended. (NB)

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WISCONSIN LEGISLATIVE COUNCIL
REPORT NO. 5 TO THE 1987 LEGISLATURE

LEGISLATION ON COMMUNITY CORRECTIONS ISSUES

1987 ASSEMBLY BILL 260, RELATING TO RESTITUTION

1987 ASSEMBLY BILL 261, RELATING TO ACTIONS AND JUDGMENTS INVOLVING CERTAIN PERSONS PROVIDING CHILD CARE SERVICES

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WISCONSIN LEGISLATIVE COUNCIL
REPORT NO. 5 TO THE 1987 LEGISLATURE*

LEGISLATION ON COMMUNITY CORRECTIONS ISSUES

CONTENTS

		Page
PART I:	KEY PROVISIONS OF 1987 ASSEMBLY BILLS	3
	A. 1987 Assembly Bill 260, Relating to Restitution	3
	B. 1987 Assembly Bill 261, Relating to Actions and Judgments Involving Certain Persons Providing Child Care Services	3
PART II:	COMMITTEE ACTIVITY	5
	A. Assignment	5
	B. Summary of Meetings	5
	C. Committee and Council Votes	7
	D. Staff Materials	7
PART III:	DESCRIPTION OF 1987 ASSEMBLY BILL 260	9
	A. Background	9
	B. Major Provisions	9
PART IV:	DESCRIPTION OF 1987 ASSEMBLY BILL 261	11
	A. Background	11
	B. Major Provisions	12
APPENDIX:	COMMITTEE MATERIALS	13

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PART I

KEY PROVISIONS OF 1987 ASSEMBLY BILLS

A. 1987 ASSEMBLY BILL 260, RELATING TO RESTITUTION

1. Allows the court to order payment of unpaid restitution as a condition of parole for revoked probationers.

2. Requires the district attorney to obtain information on the victim's pecuniary loss, unless a presentence investigation is ordered.

3. Clarifies that the victim must demonstrate the amount of losses and the defendant must demonstrate his or her ability to pay.

4. Allows the court to establish a schedule for payment of restitution and to order joint and several liability for payment of restitution.

5. "Sunsets" most of the revisions to the restitution law on July 1, 1994.

B. 1987 ASSEMBLY BILL 261, RELATING TO ACTIONS AND JUDGMENTS INVOLVING CERTAIN PERSONS PROVIDING CHILD CARE SERVICES

1. Specifies that persons participating as child care workers in the Department of Health and Social Services' (DHSS) Pilot Project to provide child care services to the children of probationers are state agents and covered by the state's liability program for its officers, employers and agents.

2. Authorizes the Department of Justice to treat, as a state agent, any person participating as a child care worker in the DHSS's Pilot Project.

PART II

COMMITTEE ACTIVITY

A. ASSIGNMENT

The Legislative Council established the Special Committee on Community Corrections Issues by an April 15, 1986 mail ballot, based on an April 10, 1986 letter from Representative Dismas Becker, which requested the Council to examine community corrections issues.

The membership of the Special Committee, appointed by a June 17, 1986 mail ballot, consisted of one Senator, six Representatives and eight Public Members. {One Public Member subsequently resigned.}

The Special Committee held six meetings at the State Capitol in Madison on the following dates:

July 17, 1986	November 19, 1986
August 13, 1986	December 17, 1986
September 24, 1986	February 11, 1987

B. SUMMARY OF MEETINGS

At its initial meeting on July 17, 1986, the Special Committee received testimony on the effectiveness of community corrections issues by three invited speakers: (1) Stephen Kronzer, Deputy Administrator, Division of Corrections, DHSS; (2) Beverly Davis, Unit Supervisor, Bureau of Community Corrections, DHSS; and (3) Terry Marshall, Executive Director, the Attic Halfway House, Madison. The Committee also reviewed a staff paper providing background information on Wisconsin's prison and community corrections system.

At the August 13, 1986 meeting, the Special Committee heard presentations on the Division of Corrections' proposed 1987 Biennial Budget request to the DHSS from three invited speakers: (1) Walter J. Dickey, Administrator, Division of Corrections, DHSS; (2) Mike Sullivan, Director, Bureau of Community Corrections, Division of Corrections, DHSS; and (3) Cindy Schoenike, Deputy Director, Bureau of Community Corrections, Division of Corrections, DHSS.

At its September 24, 1986 meeting, the Special Committee heard presentations from invited speakers from Milwaukee and Madison on: (1) the use of private sector community corrections programs through the Division of Corrections' purchase of services; (2) recommendations

relating to programs and services for female offenders; and (3) the Dane County deferred prosecution, first offender and youth restitution programs. The Special Committee also reviewed a Legislative Audit Bureau Report and legislation proposed by the Judicial Council relating to revisions to Wisconsin's restitution law.

At its November 19, 1986 meeting, the Special Committee heard presentations by two invited speakers from Baraboo and Beloit on deferred prosecution Pilot Projects in Sauk and Rock Counties, respectively. The Committee also reviewed staff materials on provisions for liability insurance for the Milwaukee Welfare Fraud Child Care Pilot Project, Wisconsin's restitution law and options for establishing provisions for parole supervision fees.

At its December 17, 1986 meeting, the Special Committee discussed and recommended to the Legislative Council WLCS: 154/P1, relating to restitution. The Committee also recommended that draft letters be sent to Secretary Linda Reivitz, DHSS, regarding the administration of deferred prosecution agreements and to Department of Administration Secretary-Designee James R. Klauser, regarding a day treatment program for paroled offenders.

At its February 11, 1987 meeting, the Special Committee discussed and recommended to the Legislative Council WLCS: 229/1, relating to extending the state liability program to certain probationers, providing child care services and authorizing the Department of Justice to represent those persons. The Special Committee also heard presentations by Secretary Timothy Cullen, DHSS, and Stephen Bablitch, Administrator, Division of Corrections, DHSS, on their views and proposed initiatives for community corrections programs.

The Special Committee voted to send a letter to the DHSS recommending retention of the DHSS's Advisory Council on Female Offenders, establishment of a policy for the treatment of pregnant female offenders and creation of other appropriate female offender programs and services.

The Special Committee also directed Chairperson Becker to send a letter to the Joint Committee on Finance, recommending that community corrections programs be given funding priority on the biennial budget process.

C. COMMITTEE AND COUNCIL VOTES

1. 1987 Assembly Bill 260, Relating to Restitution

At its December 17, 1986 meeting, the Special Committee on Community Corrections Issues recommended that the Legislative Council introduce the proposal by a vote of Ayes, 11 (Reps. Becker, Tesmer, S. Coggs, Krusick and Prosser; Sen. Rude; and Public Members Fitzgerald, Gorski, Heffernan, Manian and Strander); Noes, 0; and Absent, 3 (Rep. Lepak; and Public Members McCandless and Meaux).

At its March 25, 1987 meeting, the Legislative Council voted to introduce the proposal in the 1987 Legislative Session by a vote of Ayes, 16 (Sen. Risser; Reps. Nelsen, Bell, Bradley, M. Coggs, Hauke, McEssy, Prosser, Schneider and Tesmer; and Sens. Davis, Kreul, Lee, Moen, Norquist and Strohl); Noes, 0; and Absent, 5 (Speaker Loftus; Rep. Clarenbach; and Sens. Engeleiter, George and Harsdorf).

2. 1987 Assembly Bill 261, Relating to Actions and Judgments Involving Certain Persons Providing Child Care Services

At its February 11, 1987 meeting, the Special Committee on Community Corrections Issues recommended that the Legislative Council introduce the proposal by a vote of Ayes, 8 (Reps. Becker, Tesmer, Krusick and Prosser; Sen. Rude; and Public Members Gorski, Heffernan and Strander); Noes, 0; and Absent, 6 (Reps. Lepak and S. Coggs; and Public Members Fitzgerald, Manian, McCandless and Meaux).

At its March 25, 1987 meeting, the Legislative Council voted to introduce the proposal in the 1987 Legislative Session by a vote of Ayes, 14 (Speaker Loftus; Sen. Risser; Reps. Bell, M. Coggs, Hauke, Prosser, Schneider and Tesmer; and Sens. Davis, Kreul, Lee, Moen, Norquist and Strohl); Noes, 3 (Reps. Nelsen, Bradley and McEssy); and Absent, 4 (Rep. Clarenbach; and Sens. Engeleiter, George and Harsdorf).

D. STAFF MATERIALS

The Appendix lists all materials received by the Special Committee. The following documents, prepared by the Council Staff, may be of particular interest. These and other materials listed in the Appendix are available at the Legislative Council offices.

1. Overview of Wisconsin's Prison and Community Corrections System

Staff Brief 86-4, Background on Wisconsin's Prison and Community Corrections System, dated July 10, 1986, describes components of: (a) the prison system including administration, the sentencing process, inmate assessment and evaluation and parole determination; and (b) the community corrections system including administration, probation and parole case classification, case management classification, supervision of probationers and parolees, programs and services for female offenders, revocation of probation and parole and the use of county jails.

2. Background Information on the Special Committee's Recommendations

a. MEMO NO. 1, Legislation Proposed by the Judicial Council's Restitution Committee, dated September 18, 1986, provides background information on and summarizes 1985 Senate Bill 589, which was developed by the Judicial Council's Restitution Committee at the request of the Joint Committee on Audit.

b. MEMO NO. 2, Liability Insurance for Milwaukee Welfare Fraud Child Care Pilot Project, dated November 12, 1986, provides background information on the DHSS child care pilot project in Milwaukee for welfare fraud offenders and a list of options for discussion by the Special Committee.

PART III

DESCRIPTION OF 1987 ASSEMBLY BILL 260

A. BACKGROUND

During its deliberations, the Special Committee on Community Corrections Issues heard testimony that requiring offenders to pay restitution to crime victims improves the public's perception of community corrections programs as an alternative to incarceration. The Special Committee reviewed Legislative Audit Bureau Report No. 85-10, An Evaluation of Restitution by Adult Probationers (April 1985), which identified several areas of statutory vagueness and administrative inefficiency in the collection of restitution from adult offenders. The Special Committee also reviewed 1985 Senate Bill 589, relating to restitution, which was introduced by the Judicial Council to address questions raised by the Legislative Audit Bureau's Report.

The Special Committee discussed possible revisions of the restitution law which would expedite establishing the restitution amount and improve the collection of restitution ordered. The Special Committee focused its deliberations on the Legislative Audit Bureau Report's finding that the largest group for which restitution was ordered, but not collected, was probationers whose probation was revoked. Under current law, if probation is revoked, the restitution order is moot.

The Special Committee concurred with the Legislative Audit Bureau Report's finding that relying on the district attorneys' offices for collecting and documenting victim loss information would eliminate duplication in collecting this information and would expedite the court's determination of the restitution amount. The Special Committee also discussed a request from the DHSS to recommend a statutory change to allow the DHSS to equitably distribute any restitution overpayments to offenders who are jointly and severally liable for the full payment of restitution.

B. MAJOR PROVISIONS

1. 1987 Assembly Bill 260 allows the court to order payment of unpaid restitution as a condition of parole for revoked probationers. Under current law, the sentencing court must order any convicted defendant who is placed on probation to make restitution to victims; however, if probation is revoked, the restitution order is moot {s. 973.09 (1) (b) and (1m), Stats.}.

2. The Bill requires the district attorney to obtain information on the victim's pecuniary loss, unless a presentence investigation is ordered. In the latter case, the information is obtained by the probation and parole agents of the DHSS. Under current law, the court may order the district attorney, the DHSS or an official of the law enforcement agency to document the victim's pecuniary loss [s. 973.09 (1m) (b), Stats.].

3. The Bill clarifies that the victim must demonstrate the amount of losses; and the defendant must demonstrate his or her ability to pay.

4. The Bill allows the court to require that restitution be paid immediately, within a specified period or in specified instalments.

5. The Bill specifies that the court may order two or more probationers to be jointly and severally liable for payment of restitution and allow the DHSS to distribute overpayments so that each defendant pays the same amount of restitution. Under current law, the DHSS must make the overpayment to the offender who submitted the overpayment even if the other offender has already paid most of the restitution [s. 973.09 (1m) (d), Stats.].

6. The Bill sunsets all of the above provisions except for Item 5, above, on July 1, 1994.

PART IV

DESCRIPTION OF 1987 ASSEMBLY BILL 261

A. BACKGROUND

The Milwaukee Welfare Fraud Child Care Pilot Project was developed in 1985 by the Milwaukee Regional Office, Bureau of Community Corrections, DHSS, to enable selected women who are on probation for welfare fraud in Milwaukee to be trained and certified as child care providers. These women may then provide child care services for other female welfare fraud probationers so that those women can work, or seek employment, in order to pay off their restitution obligations. These welfare fraud probationers often owe a considerable amount of restitution which they cannot afford to pay and, thus, remain on probation indefinitely.

At the time the Milwaukee Regional Office was developing the Pilot Project, the Department of Administration orally advised the DHSS that the child care providers would be considered state agents and would, therefore, be covered for the purposes of liability protection under s. 895.04 (1) (a), Stats. However, the DHSS decides to request a formal opinion from the Attorney General on this question and advised the Milwaukee Regional Office to secure private liability insurance, using purchase of services funds, for the child care providers in the Pilot Project until the Attorney General's opinion was issued.

In January 1986, private insurance policies were obtained for the three child care providers under the Pilot Project at a cost of $412 per policy per year. The Milwaukee Regional Office experienced difficulty in obtaining these private insurance policies and was unable to purchase policies which were transferable to other Pilot Project participants, even though the policies were not needed for the entire year.

On April 17, 1986, the Attorney General issued an opinion on whether the probationers who provide child care services under the Pilot Project are state agents or employes who are entitled to coverage under the state's liability protection and whether they are county employes for the purposes of worker's compensation. The opinion concluded that these probationers are not state agents or employes and, therefore, are not covered by s. 895.46 (1) (a), Stats. The opinion concluded, however, that these probationers are county employes for the purpose of worker's compensation. In January 1987, the policy premiums more than doubled, to $876 per person per year. The Milwaukee Regional Office has indicated that, if the liability insurance problem is not resolved, the Pilot Project will not be able to expand, and may not continue to operate, due to the high insurance costs.

As of February 1987, six women have been trained and certified as child care providers and have cared for a total of 12 children.

B. MAJOR PROVISIONS

The Special Committee on Community Corrections Issues concluded that the women participating in the Pilot Project should be considered state agents for the purposes of being covered by the state's liability program. To accomplish this purpose:

1. The Bill specifies that persons participating as child care workers in the DHSS's Pilot Project to provide child care services to the children of probationers are state agents and covered by the state's liability program for its officers, employes and agents. Under the state liability program, the amount recoverable by any person for damages, injury or death cannot exceed $250,000.

2. The Bill authorizes the Department of Justice to treat, as a state agent, any person participating as a child care worker in the DHSS's Pilot Project.

3. The Bill provides that any judgment or settlement for claims against Pilot Project participants shall first be paid from any available insurance which may be purchased on their behalf and then shall be paid under the state liability program. The Bill does not, however, require that private insurance be purchased for Pilot Project participants.

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APPENDIX

COMMITTEE MATERIALS

Staff Materials

1. Staff Brief 86-4, Background on Wisconsin's Prison and Community Corrections System (July 10, 1986).

2. MEMO NO. 1, Legislation Proposed by the Judicial Council's Restitution Committee (September 18, 1986).

3. MEMO NO. 2, Liability Insurance for Milwaukee Welfare Fraud Child Care Pilot Project (November 12, 1986).

4. MEMO NO. 3, Options for Revising Wisconsin's Restitution Law (November 12, 1986).

5. MEMO NO. 4, Options for Establishing Probation and Parole Supervision Fees (November 12, 1986).

6. Letter from Chairperson Dismas Becker, Special Committee on Community Corrections Issues, to Secretary Linda Reivitz, Department of Health and Social Services (DHSS), regarding administration of deferred prosecution agreements (December 19, 1986).

7. Letter from Chairperson Dismas Becker, Special Committee on Community Corrections Issues, to Secretary-Designee Timothy Cullen, DHSS, regarding administration of deferred prosecution agreements (December 19, 1986).

8. Letter from Chairperson Dismas Becker, Special Committee on Community Corrections Issues, to Secretary-Designee James Klauser, Department of Administration (DOA), regarding a day treatment program for parole offenders (December 19, 1986).

Other Materials

1. Letter from Victoria McCandless, Assistant State Public Defender, to Chairperson Dismas Becker, Special Committee on Community Corrections Issues, regarding the 1987-89 Biennial Budget initiatives proposed by the Division of Corrections, DHSS (August 11, 1986).

2. Annual Report 1985: Deferred Prosecution Unit/First Offender Program, Community Service Project, Dane County District Attorney's Office (March 1986).

3. 1985 Annual Report: Wisconsin Correctional Service, Wisconsin Correctional Service (1985).

4. "Recent Research in Juvenile Restitution," Wisconsin Association of Restitution Programs (undated).

5. Pamphlet entitled "Restitution is Working," Youth Restitution Program, Inc. (undated).

6. Letter from Joseph L. Spolowicz, Correction Halfway House Coalition, Wisconsin Association of Residential Facilities, to Chairperson Dismas Becker, Special Committee on Community Corrections Issues, regarding recommendations on community corrections programs provided by the private sector (September 18, 1986).

7. Letter from Victoria McCandless, Assistant State Public Defender, to Secretary Linda Reivitz, DHSS, regarding DHSS's biennial budget requests relating to female offender programs and services (November 18, 1986).

8. Memorandum to Walter Dickey and others, DHSS, from Bob Wagner, Division of Policy and Budget, DHSS, regarding high risk offender caseload description (September 22, 1986).

9. Letter from Victoria McCandless, Assistant State Public Defender, to Chairperson Dismas Becker, Special Committee on Community Corrections Issues, regarding recommendations for the Special Committee on Community Corrections Issues (December 9, 1986).

10. Letter from Sandra Strander, Probation/Parole Agent, Bureau of Community Corrections, Division of Corrections, DHSS, to Chairperson Dismas Becker, Special Committee on Community Corrections Issues, regarding recommendations to the Joint Committee on Finance regarding Bureau of Community Corrections goals and initiatives (December 15, 1986).

11. Letter from Walter Dickey, Administrator, Division of Corrections, DHSS, to Chairperson Dismas Becker, Special Committee on Community Corrections Issues, regarding the Special Committee draft, WLCS: 154/1, relating to restitution (December 15, 1986).

12. Letter from Victoria McCandless, Assistant State Public Defender, to Chairperson Dismas Becker, Special Committee on Community

Corrections Issues, regarding recommendations of the Special Committee on Community Corrections Issues (December 12, 1986).

13. Letter from Esther Heffernan, Social Science Department, Edgewood College, to Chairperson Dismas Becker, Special Committee on Community Corrections Issues, regarding the Advisory Council on the Female Offender and services for pregnant female offenders (December 16, 1986).

14. Draft letter from Esther Heffernan, Social Science Department, Edgewood College, to Secretary Timothy Cullen, DHSS, regarding the services for pregnant female offenders (February 11, 1987).